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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,524	05/30/2001	Tomoki Kobayashi	IIW-002	1359

959 7590 07/28/2005

LAHIVE & COCKFIELD, LLP.  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

CREPEAU, JONATHAN

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/870,524

Applicant(s)

KOBAYASHI ET AL.

Examiner

Jonathan S. Crepeau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 and 17-19 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 3-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office action addresses claims 1-11, 13, and 17-19. The certified translation of the foreign priority document has been reviewed and is sufficient to obviate the 102 rejection of claims 1, 2, 7-9, and 17-19. However, the translation is not believed to adequately support the subject matter of claims 10 and 11. As such, claims 10 and 11 remain rejected under 35 USC 102. Claims 1 and 2 are newly rejected under the doctrine of obviousness-type double patenting. As the double patenting rejection was not necessitated by amendment, this action is non-final.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 10 and 11 recite that the pressure of the exhaust gas is controlled depending upon the humidity of the supply gas. The specification does not appear to explicitly or implicitly disclose this feature. Humidity control is discussed in [0058] but the claimed configuration is not disclosed. Correction or clarification is required.

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***Claim Rejections - 35 USC § 102***

3. Claims 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Kanai et al. (U.S. Patent 6,696,192). In Figure 26, the reference teaches a fuel cell system comprising a water-permeable membrane type humidifier (123) for exchanging heat and humidity between supply air and cathode exhaust gas, a compressor (124) downstream of the fuel cell cathode exhaust and upstream of the humidifier, and a pressure control valve (125) downstream of the humidifier. The compressor creates a negative pressure in the air supply (see col. 17, line 49). The humidity of the air supply (measured at sensor T1) may be used to control the pressure control valve, thereby controlling the pressure of the cathode exhaust (see col. 19, line 67 et seq.). The compressor of Kanai would inherently function to control (i.e., increase) the temperature of the exhaust gas before it is introduced into the heat exchanger. As such, claims 10 and 11 are anticipated.

***Double Patenting***

4. Claims 1 and 2 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 11-13, 15, 17, 19, 22, 24, 25, 34, 35, 39, 40, 42, and 43 of copending Application No. 09/870,957. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the '957 application anticipate the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

5. Claims 13 and 17-19 are allowed.
6. Claims 1 and 2 would be allowable if the double patenting rejection was obviated.
7. Claims 3-9 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form or if the double patenting rejection was obviated.

***Conclusion***

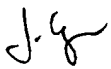
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Crepeau whose telephone number is (571) 272-1299. The examiner can normally be reached Monday-Friday from 9:30 AM - 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached at (571) 272-1414. The phone number for the organization where this application or proceeding is assigned is (571) 272-1700. Documents may be faxed to the central fax server at (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jonathan Crepeau  
Primary Examiner  
Art Unit 1746  
July 26, 2005

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